A

PP

v.

MURUGESAN MUNIYANDI

B

COURT OF APPEAL, PUTRAJAYA
HASAN LAH JCA
SULONG MATJERAIE JCA
SULAIMAN DAUD JCA
[CRIMINAL APPEAL NO: B-05-112-2008]

C

12 JULY 2011

CRIMINAL PROCEDURE: *Sentence - Adequacy of sentence - Eleven-year imprisonment for alternative charge under s. 304(a) Penal Code - Discount of three years on account of guilty plea - Whether trial judge*

D

erred in giving discount for guilty plea - Whether severity of offence taken into consideration - Whether sentence in line with recent case laws - Whether public interest to be taken into consideration when determining measure of sentence imposed

E

The accused was initially charged with the murder of his brother-in-law (both Indian nationals) under s. 302 of the Penal Code and claimed trial. At the trial, the prosecution tendered an alternative charge under s. 304(a) of the same. The accused pleaded guilty to the alternative charge and the trial judge upon

F

convicting him, took his guilty plea into consideration and gave a discount of three years from the 14 years' imprisonment he would have imposed on him if the accused was found guilty after a full trial. The accused was therefore sentenced to 11 years' imprisonment. The prosecution now appealed against the sentence. It was submitted that the trial judge erred in giving the discount

G

due to the severity of the offence committed. The facts showed that the accused had a quarrel with the deceased at the premises of the deceased and had left to seek medical treatment for some minor injuries he had sustained following from the quarrel. He

H

subsequently returned to the deceased's premises, boiled cooking oil over the stove and poured it over the deceased who was sleeping at the material time. The deceased sustained severe burns as a result thereof and died several days thereafter at the hospital. The issue was whether the trial judge erred in reducing the

I

sentence on account of the accused's guilty plea based on the facts and circumstances of the case.

Held (allowing the appeal)
Per Hasan Lah JCA delivering the judgment of the court:

(1) The trial judge relied on the accepted rule of practice that an accused should be given credit or discount for pleading guilty as stated in *Mohd Abdullah Ang Swee Kang v. PP*. The trial judge gave the discount of three years despite finding that there was deliberate cruelty on the part of the accused when committing the offence. The facts and circumstances of the case did not entitle the accused to be given a reduction in the sentence on his guilty plea. The act of the accused was premeditated. The killing was vicious and cruel. Public interest was paramount and violent crime affecting the human body resulting in death committed with a degree of premeditation must be met with the severest punishment provided by the law (*PP v. Kanadasan Sankaran & Anor*; foll). (paras 14-16)

(2) The sentence passed by the trial judge was not in line with the recent decisions of the court involving similar offences. The sentence passed was manifestly inadequate having regard to the facts and circumstances of the case. The trial judge failed to have sufficient regard to public interest when determining the measure of sentence imposed. (para 26)

[Sentence increased to 18 years' imprisonment.]

Bahasa Malaysia *Translation Of Headnotes*

Tertuduh pada mulanya dipertuduhkan dengan pembunuhan abang iparnya (kedua-dua mereka warganegara India) di bawah s. 302 Kanun Keseksaan dan telah meminta untuk dibicarakan. Pada masa perbicaraan, pihak pendakwaan mengemukakan pertuduhan alternatif di bawah s. 304(a) Kanun yang sama. Tertuduh mengaku salah atas pertuduhan alternatif tersebut dan hakim bicara apabila menyabitkannya, mengambilkira pengakuan salahnya itu dan memberikan diskaun tiga tahun daripada hukuman pemenjaraan 14 tahun yang akan dikenakan terhadap tertuduh jika ianya didapati bersalah selepas perbicaraan penuh. Dengan itu, tertuduh dijatuhkan 11 tahun hukuman pemenjaraan. Pihak pendakwaan kini merayu terhadap hukuman tersebut. Ianya dihujahkan bahawa hakim bicara terkhilaf dalam memberi diskaun tersebut memandangkan ketegasan kesalahan tersebut. Fakta kes menunjukkan bahawa tertuduh telah bertengkar dengan si mati di premis si mati dan justeru itu telah meninggalkan premis tersebut untuk mendapatkan rawatan perubatan bagi luka kecil yang

dialaminya akibat pertengkaran tersebut. Tertuduh kemudiannya balik ke premis si mati, mendidih minyak masak dan menuangnya ke atas si mati yang sedang tidur ketika itu. Si mati menghadapi lecuran yang teruk akibat tindakan tertuduh itu dan meninggal dunia selepas beberapa hari di hospital. Isunya adalah sama ada hakim bicara terkhilaf dalam mengurangkan hukuman pemenjaraannya atas pengakuan salah perayu berdasarkan fakta dan keadaan kes.

Diputuskan(membenarkan rayuan)

Oleh Hasan Lah HMR menyampaikan penghakiman mahkamah:

(1) Hakim bicara telah bergantung kepada prinsip amalan yang diterima yakni seorang perayu sepatutnya diberikan kredit atau diskaun bagi pengakuan salahnya sepertimana yang disimpulkan dalam kes *Mohd Abdullah Ang Swee Kang v. PP*. Hakim bicara telah memberikan diskaun tiga tahun biarpun tindakan kejam yang sengaja dilakukan tertuduh. Fakta dan keadaan kes tidak memberi hak kepada perayu untuk diberikan diskaun tiga tahun atas pengakuan salahnya itu. Tindakan perayu terancang lebih dahulu. Pembunuhan tersebut jahat dan kejam. Kepentingan awam amat penting dan jenayah kejam yang melibatkan tubuh manusia mengakibatkan kematian yang dilakukan sekadar terancang lebih dahulu mesti dikenakan hukuman yang teruk sekali sepertimana ditetapkan undang-undang (*PP v. Kanadasan Sankaran & Anor*; foll).

(2) Hukuman yang dikenakan hakim bicara tidak mengikut keputusan-keputusan mahkamah yang melibatkan kesalahan-kesalahan yang sama. Hukuman yang dikenakan kurang sekali memandangkan fakta dan keadaan kes. Hakim bicara gagal untuk memberikan pertimbangan yang sewajarnya kepada kepentingan awam apabila menentukan setakat mana hukuman yang patut dikenakan.

[Hukuman pemenjaraan ditambahkan kepada 18 tahun.]

Case(s) referred to:

Bachik Abdul Rahman v. PP [2004] 2 CLJ 572 CA ***(refd)***
Che Hasan Senawi v. PP [2008] 5 CLJ 769 CA ***(refd)***
Kesavan Baskaran v. PP [2008] 6 CLJ 390 CA ***(refd)***
Mohd Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 SC ***(refd)***
PP v. Kanadasan Sankaran & Anor [2010] 1 CLJ 596 CA ***(refd)***

PP v. Karthiselvam Vengatan [2009] 4 CLJ 632 CA ***(refd)***
PP v. Loo Choon Fatt [1976] 1 LNS 102 HC ***(refd)***
PP v. Ravindran & Ors [1992] 1 LNS 47 HC ***(refd)***
Ralon Banas v. PP [2000] 3 CLJ 310 CA ***(refd)***
Sau Soo Kim v. PP [1975] 1 LNS 158 FC ***(refd)***
Yit Kean Hong v. PP [2005] 4 CLJ 592 CA ***(refd)***

Legislation referred to:
Penal Code, ss. 302, 304(a)

For the appellant - Munahyza Mustafa DPP
Respondent In person

[Appeal from High Court, Johor Bahru; Criminal Trial No: 45-35-2006]

Reported by Usha Thiagarajah

JUDGMENT

Hasan Lah JCA:

[1] This is an appeal by the public prosecutor against sentence. The respondent ("the accused"), an Indian National, was charged for the murder of one Subramaniam a/l Ganesan, also an Indian national, on 23 February 2006 at about 3am at Lot 239Y, Jalan Kampung Jawa, Batu 3 1/2, Klang, an offence under s. 302 Penal Code. The accused claimed trial.

[2] On 14 July 2008 when this case came up for trial, the learned Deputy Public Prosecutor tendered an alternative charge under s. 304(a) Penal Code. The accused pleaded guilty to the alternative charge after same was read and explained to him. The High Court, accordingly, found him guilty on the alternative charge and convicted him. After considering his plea in mitigation and the facts relating to the commission of the offence, he was sentenced to 11 years imprisonment from the date of his arrest.

[3] The facts of the case are as follows. The accused was the brother-in-law of Subramaniam a/l Ganesan ("the deceased"). The deceased worked as a barber and he stayed alone in a room on the first floor of a shop premises at Lot 239Y, Batu 3 1/2, Kampong Jawa, Klang ("the said premises"). The accused stayed at Golden Villa, Batu 4, Kampong Jawa, Klang.

[4] On 22 February 2006 at about 11.30pm the accused had a quarrel with the deceased at the said premises. In the quarrel the accused suffered injuries to his right eyebrow and left leg. The accused left the deceased's room and went to seek for medical treatment.

[5] On 23 February 2006 at about 3am, the accused went back to the deceased's room at the said premises. The deceased was sleeping at that time. The accused then boiled cooking oil in a frying pan. After the cooking oil was hot he poured the boiling cooking oil onto the deceased's body. The deceased woke up and tried to catch the accused. The accused hit the deceased's head with the hot frying-pan and threw curry powder to the deceased's face.

[6] The deceased was sent to Hospital Tengku Ampuan Rahimah, Klang on 23 February 2006 at about 4.56am. He died on 1 March 2006. Post-mortem examination showed that he sustained severe burns to his face, neck, front and back part of his body, both shoulders and upper limbs. He also had burn injuries to the front of both thighs. The pattern of burn showed that it was caused by hot fluid. His cause of death was septicaemia due to severe burn.

[7] The accused was arrested by the police on 24 February 2006 at about 1.10am.

[8] The learned Deputy Public Prosecutor submitted that the sentence of imprisonment imposed on the accused was manifestly inadequate. She submitted that the learned High Court judge had erred in not considering the facts and circumstances of the case, and the public interest. It is her submission that on the facts and circumstances of this case the accused ought to be punished with the severest sentence and the accused should not be given a discount for pleading guilty.

[9] The accused's plea in mitigation before the learned High Court judge can be found at pp. 61 to 79 of the Appeal Record. He was 40 years old when he was charged for this offence. He came to Malaysia in 2004 and worked as a hairdresser at Kg Jawa, Klang. He has a wife and two sons, 16 and 20 years old. He had no previous criminal record.

[10] Learned counsel for the accused urged the learned High Court judge to take into consideration the fact that the accused had pleaded guilty to the alternative charge. The accused should be given credit or discount for pleading guilty. In support of that learned counsel cited the cases of *Sau Soo Kim v. PP* [1975] 1 LNS 158 and *Mohd Abdullah Ang Swee Kang v. PP* [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 and a few other cases.

[11] Learned counsel for the accused also tendered a table of past decided cases involving sentences imposed by various courts in this country for convictions under s. 304(a) Penal Code before the learned High Court judge.

[12] In his judgment the learned High Court judge, *inter alia*, said:

> Having regard to all the circumstances obtaining in this case and in the light of the established sentencing principles, if this case were to go on with the trial and if the accused person were to be found guilty by me, he would have been sentenced to about 14 years imprisonment for his crime. But he had pleaded guilty and the circumstances in this case should entitle him to some discount. The learned Chief justice (Borneo) Lee Hun Hoe in the Supreme Court case of *Sau Soo Kim*'s case *(supra)* had said therein that even a hardened criminal ought to be given a discount on sentence if he pleads guilty and the oft-quoted case of *Mohd Abdullah Ang Swee Kang v. PP* [1988] 1 MLJ 167, another Supreme Court's decision is clearly an authority for the proposition that an accused person who had pleaded guilty should be given a discount of between 25% to 30% discount on the sentence which the court would have imposed on him upon finding him guilty after a full trial. At page 171 Mohamad Azmi SCJ in delivering the judgment of the Supreme Court said: "It is generally accepted that the extent of the reduction on account of a plea of guilty would be between one quarter and one-third of what otherwise would have been the sentence."
>
> These 2 cases have since become the bright twin guiding beacons that have helped enlighten our courts in their tasks of coming to an appropriate sentence to be imposed on prisoners appearing before them on a daily basis. Needless to say, these two cases have been resurrected time and again in our criminal courts throughout our country more often than not by defence counsels when pleading for leniency on behalf of their clients. As decisions emanating from the apex Court in our country, these 2 decisions must be accorded the utmost respect that they richly deserve, over and above the fact that they are binding upon this Court.

> Under the circumstances of the case obtained before me, I hereby order that this prisoner be imposed a term of imprisonment of 11 years [after giving him a discount of 3 years, from the 14 years imprisonment which I would have imposed on him if I had found him guilty after a full trial]. I noted that the facts obtained in this case could be described as showing deliberate cruelty on the part of this prisoner, but having read the *Ralon Banas* case *(supra)* I cannot pretend to say that the factual severity in both cases is the same. The facts in the *Ralon Banas* case *(supra)* can only be described as extreme. So to my mind, that sentence of 11 years against this prisoner would best serve the public interest. To me, it represents a fair and correct balance that needed to be struck between the public interest and the individual interest considerations in this case before me. That 11 years imprisonment would be sufficiently long enough for this prisoner to reflect on his senseless folly when he had poured boiling oil on the body of his brother-in-law on that fateful day, and make peace with his maker. I order that the said sentence to run with effect from his date of arrest. I also order that all exhibits, except documentary exhibits, to be forfeited and destroyed according to law.

[13] The punishment for the offence under s. 304(a) Penal Code is an imprisonment for a term which may extend to 20 years, and shall also liable to fine. Sentencing is guided by established principles and guidelines. It is trite law that what sentence to be imposed in a given case is a matter of discretion for the sentencing court. An appellate court should not therefore intervene unless the court below has erred in principle, that is to say, it took into account irrelevant considerations or failed to take into account relevant considerations or passed a sentence that is manifestly inadequate or not permitted by law (see *PP v. Karthiselvam Vengatan* [2009] 4 CLJ 632; *Yit Kean Hong v. PP* [2005] 4 CLJ 592). It is also a principle in sentencing that the sentencing court should also look at the sentences imposed in other cases for a similar offence. It must, however, be borne in mind that no two cases can have exactly the same facts as to the minutest details and each case has to be decided on its own merits. In *PP v. Loo Choon Fatt* [1976] 1 LNS 102; [1976] 2 MLJ 256 at p. 257, Hashim Yeop Sani J (as he then was) had this to say:

> In respect of sentencing there can be only general guidelines. No two cases can have exactly the same facts to the minutest detail. Facts do differ from case to case and ultimately each case has to be decided on its own merits. In practice sentences do differ not only from case to case but also from court to court. All things

being equal these variations are inevitable if only because of the human element involved. But, of course, there must be limits to permissible variations.

The principles to be applied in imposing sentence however are the same in every case. The High Court sitting in exercise of its revisionary powers will not normally alter the sentence unless it is satisfied that the sentence of the lower court is either manifestly inadequate or grossly excessive or illegal or otherwise not a proper sentence having regard to all the facts disclosed on the record or to all the facts which the court ought to take judicial notice of, that is to say, that the lower court clearly has erred in applying the correct principles in the assessment of the sentence. It is a firmly established practice that the court will not alter a sentence merely because it might have passed a different sentence.

[14] We deal first with the issue of whether the learned High Court judge was right in giving the reduction to the sentence passed on the accused on account of a plea of guilty. In giving credit or discount for the accused's pleading guilty the learned High Court judge relied on the accepted rule of practice that an accused should be given credit or discount for pleading guilty as stated in the oft-quoted case of *Mohd Abdullah Ang Swee Kang*. On this issue, this court, in *Bachik Abdul Rahman v. PP* [2004] 2 CLJ 572 at pp. 583 and 584, after referring to *Mohd Abdullah Ang Swee Kang*, had made the following observation:

... The position in law is that it is generally accepted that an accused person should be given credit or discount for pleading guilty (see *Sau Soo Kim v. PP* [1975] 2 MLJ 134; *PP v. Sulaiman bin Ahmad* [1993] 1 MLJ 74; *PP v. Ravindran & Ors* [1993] 1 MLJ 45). The discount that is given is normally a reduction of the sentence by about a third of what would otherwise have been imposed (see *Mohd Abdullah Ang Swee Kang v. PP* [1987] 2 CLJ 405; [1987] CLJ (Rep) 209; *PP v. Muhari Mohd Jani & Anor* [1999] 8 CLJ 430; *Christopher Khoo Ewe Cheng v. PP* [1998] 3 CLJ 705). However, this is not a strict rule as the court may, in the exercise of its discretion, refuse to grant any discount in an appropriate case (see *Zaidon Shariff v. PP* [1996] 4 CLJ 441; *Lee Say & Ors v. PP* [1985] 2 CLJ 155; [1985] CLJ (Rep) 683). Its application in favour of an accused depends on the facts and circumstances of each case (see *Wong Kai Chuen Philip v. PP* [1999] 1 MLJ 321). Thus, as lucidly explained by Charles JA in *Leigh Nicholas Donnelly v. R* [1997] 91 A Crim R 550 at p 554:

A court's attitude towards the fact of a plea of guilty is expected to act as an encouragement to enter such a plea. The issue with which the court is to be concerned is what weight should be given to it in the circumstances.

The circumstances in which a guilty plea will not have any weight are varied. The severity of the offence committed may outweigh the mitigating effect of a guilty plea (see *Loh Hock Seng & Anor v. PP* [1980] 2 MLJ 13; *PP v. Oo Leng Swee & Ors* [1981] 1 MLJ 247). Where public interest demands a deterrent sentence in the circumstances of a particular case, then the effect of a guilty plea must also give way (see *Sim Gek Yong v. PP* [1995] 1 SLR 537; *PP v. Govindnan a/l Chinden Nair* [1998] 2 CLJ 370). A guilty plea cannot also be a powerful mitigating factor when effectively no defence to the charge is available to the accused (see *PP v. Low Kok Wai* [1998] 2 CLJ 105; [1988] 2 CLJ (Rep) 268). If a plea of guilty is made too late in the trial it may also cease to have mitigating effect (see *PP v. Dato Nallakaruppan Solaimalai* [1999] 2 CLJ 596). The absence of mitigating factors in favour of the accused like, for instance, the existence of previous convictions may also deprive the guilty plea of its effect. There can therefore be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment (see *PP v. Tia Ah Leng* [2000] 5 CLJ 614). Be that as it may, where there is a departure from the general rule the reason for not treating the guilty plea as a mitigating factor must be reflected in the grounds of judgment (see *Tan Lay Chen v. PP* [2000] 4 CLJ 492).

[15] In the instant appeal, the learned High Court judge, after stating that the facts showed that there was a deliberate cruelty on the part of the accused when committing the offence, had sentenced the accused to 11 years imprisonment after giving him a discount of three years. It is our judgment that on the facts and circumstances of this case, the accused's plea of guilty did not entitle him to a reduction in the sentence.

[16] Our reasons are these. The relevant peculiar fact of this case is that the accused poured boiling cooking oil on the deceased's body while he was sleeping. The deceased did not die immediately but he died seven days later. From the facts it is clear that the attack by the accused had been premeditated. The killing was vicious and cruel. Public interest is paramount and violent crime affecting the human body resulting in death committed with a degree of premeditation must be met with the severest punishment provided by the law. In this connection we agree with the observation made by this court in *PP v. Kanadasan Sankaran & Anor* [2010] 1 CLJ 596 at p 608:

No one who has killed an innocent person can expect upon conviction to be dealt with other than with utmost severity. Unless there are mitigating circumstances, they can expect to be sentenced or punished with the severest allowed by law.

While on this subject of "guilty plea", we would like to associate ourselves to what was said by the learned judge in *PP v. Gunasekaran Arjunan & Anor (supra)* at p 1007. We will quote the relevant text *in extenso*:

> A plea of guilty does not automatically take away the discretion of any court to impose the maximum sentence provided for the said offence under the law. Accused and counsel should not delude themselves into thinking that a plea of guilty entitles an offender, a legal right to a sentence lesser than the maximum. Public interest is paramount and violent crimes affecting the human body resulting in death committed with a degree of premeditation, without any cause by the deceased to have such a fate fall upon him, must be met with the severest punishment provided by the law.
>
> The Courts of Justice are not market places. The word 'discount', in relation to sentences, upon a plea of guilty, should not be used indiscriminately; as it gives the impression that the accused can 'bargain' over his sentence, as one bargains over a price at a market place. The threat of inconvenience to the court by a prolonged trial and expense, in the event the court does not accede to pass a particular sentence or a lesser sentence than the maximum, upon a plea of guilty, should never prevail. The appropriate sentence in every case, whether the accused had pleaded guilty or otherwise, must be determined entirely on the peculiar facts of the case, after taking into consideration public interest, as paramount, at all times, bearing in mind current needs and demands of state, society, and individuals for realistic punishment and rehabilitation of offenders who have no respect for the law or human life.

[17] We will now deal with the trend of sentencing in other cases for a similar offence. In *PP v. Ravindran & Ors* [1992] 1 LNS 47; [1993] 1 MLJ 45, at p. 52 Visu Sinnadurai J made the following observation:

> It therefore appears, that the practice in Malaysia and Singapore, as a general rule, is to impose an eight to ten year term of imprisonment for a similar offence: the Federal Court in Tham Kai Yau[12] imposing a ten-year imprisonment where the accused

A had pleaded not guilty to a charge of murder and subsequently found guilty under the first limb of s. 304; the Singapore High Court imposing an eight-year term of imprisonment in Tay Chuan Beng[14] and a ten-year imprisonment in Chot Saik Kam[13].

B **[18]** In his judgment the learned High Court judge referred to the case of *Ralon Banas v. PP* [2000] 3 CLJ 310. In that case the accused person had also pleaded guilty to the reduced charge under s. 304(a) Penal Code for having killed the victim. The facts show that the accused had shot the victim in cold blood in front of the latter's mother, who was frantically pleading with the C accused person not to kill her son. The accused had aimed his revolver at the victim and had then pulled the trigger five times, three of which hit the victim and one of which had pierced through his heart. The Court of Appeal had affirmed the sentence of 15 years imprisonment imposed on the accused by the trial D court.

[19] In *Kanadasan Sankaran & Anor* the Court of Appeal had made the following observation:

E It would appear to us that the trend of sentencing for offences of almost similar nature varies from 12 years to 20 years. In *Vinaga Moorthy Gopal v. PP* [2003] 1 CLJ 758, the appellant was charged, convicted and sentenced for an offence under s. 304 of the Penal Code and was sentenced to 12 years imprisonment. The appellant appealed against sentence alleging that it was manifestly excessive. F The appeal was dismissed. In *PP lwn. Ooi Kwang Lai* [2000] 6 MLJ 622 the accused was charged under s. 304(a) of the Penal Code and had pleaded guilty. He was sentenced to 15 years imprisonment. In *PP v. Gunasekaran Arjunan & Anor* [2006] 3 CLJ 1003, the first and second accused were originally charged for the G offence of murder under s. 302 Penal Code read together with s. 34 of the said Code, in causing the death of one Balu a/l Subramaniam. Both the accused claimed trial to the said charge. Not dissimilar to this instant case, the prosecution tendered an alternative charge under s 304(a) Penal Code and both the accused pleaded guilty to the said charge. Both accused were H convicted and sentenced to 20 years' imprisonment.

[20] In *Kanadasan Sankaran & Anor* the victim was slashed on his face and neck while he was sleeping by the accused with a parang. The accused was initially charged with murder under I s. 302 Penal Code but after five prosecution witnesses had given evidence, the accused pleaded guilty to the alternative charge under s 304(a) Penal Code. The judicial commissioner sentenced

the accused to ten years imprisonment from the date of arrest. On appeal by the public prosecutor, the Court of Appeal sentenced the accused to 17 years imprisonment.

[21] In *Karthiselvam Vengatan*, the accused who was originally charged under s. 302 Penal Code pleaded guilty to a reduced charge under s. 304 of the same and was sentenced to 13 years imprisonment. On appeal by the public prosecutor, the Court of Appeal enhanced the sentence to 20 years imprisonment. In his judgment Gopal Sri Ram JCA, at pp. 635 & 636 had this to say:

> In our judgment, the sentence passed by the court below is manifestly inadequate having regard to the foregoing facts and circumstances, particularly the gruesome way in which death was caused and the absence of any truly mitigating circumstances. It is also our respectful view that the High Court failed to have sufficient regard to the public interest when determining the measure of sentence in this case. And it cannot be over-emphasised that a sentencing court should "strike a balance, as far as possible, between the interests of the public and the interests of the accused." (*Public Prosecutor v. Loo Choon Fatt* [1976] 2 MLJ 256, per Hashim Yeop A Sani). Lastly, the fact that the accused pleaded guilty appears to have influenced the court below to impose the sentence it did. However, it must always be remembered that a plea of guilty should not be taken to automatically entitle an accused to a reduction of sentence. As Karthigesy JA said in *Fu Foo Tong v. Public Prosecutor* [1995] 1 SLR 448:
>
> > It is not axiomatic that every plea of guilty 'entitles', as it was contended by counsel to a discount of between one-quarter to one-third of what might otherwise be considered an appropriate sentence after a trial. A plea of guilty can be of no mitigating value, for example, when the evidence overwhelmingly supports a conviction.
>
> It is quite apparent from the facts already set out earlier in this judgment that the evidence in this case overwhelmingly supports the conviction of the accused.

[22] In *Kesavan Baskaran v. PP* [2008] 6 CLJ 390 the appellant was sentenced to 14 years imprisonment by the High Court after pleading guilty under s 304(a) Penal Code. The facts show that the appellant who was financially strained planned to rob the victim. He enlisted the assistance of the other two accuseds to commit the crime. The victim was savagely beaten then tied up and placed into a sack and thrown into a pond. The appellant

A appealed against the sentence. The Court of Appeal dismissed his appeal and enhanced the sentence to 18 years imprisonment. In his judgment Gopal Sri Ram JCA, at p. 397 said:

> Having regard to the way which the crime was planned and the most cruel and brutal fashion it was executed the appellant's plea of guilty in our judgment ought to be given no weight. In short, on the peculiar facts of this case it does not operate as a mitigating factor.

[23] In *Che Hasan Senawi v. PP* [2008] 5 CLJ 769, the appellant was originally charged for the offence of murder under s. 302 of the Penal Code. At the commencement of his trial an amended charge under s 304(a) of the Penal Code was tendered by the prosecution. The accused pleaded guilty to the amended charge. He was sentenced to 19 years imprisonment with effect from date of arrest.

[24] The facts in that case show that the victim, a lady, was on her way home when she was escorted by the appellant who was riding a motorcycle. He made advances to her which she repelled. She then ran into her home and was pursued by the appellant who killed her with a hammer. The medical evidence shows that the victim died from a single blow to her head.

[25] The Court of Appeal dismissed the appellant's appeal and affirmed the sentence passed by the High Court. In his judgment Gopal Sri Ram JCA, at pp. 772 and 773 said:

> Ordinarily in a case of this sort, the maximum sentence of 20 years would have been imposed. It is entirely possible that the sentence of 19 years imposed reflects the intention of the learned judge to take into account the appellant's plea of guilty.
>
> In our judgment, the correct approach to be taken where the maximum or near maximum sentence is warranted is that set out in the judgment of Yong Pung How CJ in *Sim Gek Yong v. Public Prosecutor* [1995] 1 SLR 537. The learned Chief Justice of Singapore expressed a view with which we respectfully agree. This is what his Honour said:
>
> > The principles espoused above in *R v. Tait and Bartley* [1979] 24 ALR 473 and *Bensegger v. R* [1979] WAR 65 represent, in my view, the approach which should be adopted by a court towards the issue of maximum sentences. To restrict the maximum sentence to the 'worst case imaginable' would only invite an endless permutation of hypotheses. In the appellants' case, for instance, would

> the 'worst case imaginable' be one in which custom officers had been injured? Or would it be one in which one of the officers had been killed? Or would it be one in which an innocent bystander had been fatally hit by the appellant's car? The possibilities are limitless and the uncertainty intolerable. All that a court can realistically do - and all that it should do - when deciding whether or not to impose a maximum sentence is to identify a range of conduct which characterizes the most serious instances of the offence in question. This would, as the court in *R v. Tait* and Bartley pointed out, involve consideration both of the nature of the crime and of the circumstances of the criminal.

[26] It is our judgment that the sentence passed by the learned High Court judge in the instant appeal is not in line with the recent decisions of the court involving similar offence. Looking at the recent decisions mentioned earlier, we find the sentence passed by the learned High Court judge was manifestly inadequate having regard to the facts and circumstances of the case. The learned High Court judge failed to have sufficient regard to public interest when determining the measure of sentence imposed.

[27] For the reasons given, we allowed the appeal and enhanced the sentence to 18 years imprisonment from date of arrest.